

CONFLICT AND DISPUTE REDUCTION MECHANISM OF PROCUREMENT
METHOD IN CONSTRUCTION INDUSTRY IN MALAYSIA

NURUL ATHIRAH BINTI MOHD NASIR

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ABSTRACT

In resolving conflict and dispute for construction industry, various conflict management and dispute resolution methods have been and continue to be explored and develop, but the results are still unsatisfactory in views of tremendous increases of initiation of arbitration and litigation cases. This study examines the extent of innovative procurement method as conflict and dispute reduction mechanism compared to traditional procurement method. The study are divided into two part:

Part 1 is concentrated on theory and literature survey, by using texts, journals, conference proceedings, dissertation and computer network information system;

Part 2 is field study on issues related to conflict, dispute and procurement methods. One hundred and fifty postal questionnaire has been sent to key players in construction industry such as client, architect, consultant, contractor and quantity surveyor, to collect information, data and views related to conflict, dispute and procurement methods. The survey reveals that the most common used procurement methods, traditional procurement methods had the highest dispute rate comparing to other innovative procurement methods such as Design and Build, Construction Management and Partnering. The survey also reveals that the usage of innovative procurement methods is able to reduce the frequency of dispute occurrence for Malaysia construction industry. For creating a more harmony and peaceful environment in construction industry, appropriate action need to be taken to encourage the industry maximizing the usage of innovative procurement method.

ABSTRAK

Dalam menyelesaikan masalah konflik dan perselisihan industri binaan, berbagai cara pengurusan konflik dan cara penyelesaian perselisihan telah dan sedang diselidik dan dibangunkan, namun hasilnya masih tidak memuaskan memandangkan bilangan kes perselisihan faham yang dibawa ke mahkamah meningkat dengan pesat. Kajian ini mengkaji sejauh mana cara *procurement* inovasi bertindak sebagai cara pengurangan konflik dan perselisihan berbanding dengan cara *procurement* tradisi. Kajian ini terbahagi kepada dua bahagian

Bahagian 1 merupakan kajian teori dan literature, dengan merujuk kepada buku, jurnal, kertas seminar, disertasi dan system maklumat rangkaian komputer;

Bahagian 2 merupakan kajian tapak, seratus lima puluh set soalan soal selidik dihantar kepada pemilik, arkitek, konsultan, kontraktor dan jurukur, untuk mengumpul informasi, data dan pandangan. Keputusan kajian menunjukkan cara *procurement* yang paling kerap digunakan, iaitu cara *procurement* tradisi, membawa kadar perselisihan faham yang paling tinggi berbanding dengan cara *procurement* inovasi yang lain. Kajian ini juga menunjukkan penggunaan cara *procurement* inovasi dapat mengurangkan kekerapan berlakunya perselisihan faham untuk industri binaan Malaysia. Untuk mewujudkan suasana kerja yang harmoni dan aman di industri binaan, langkah-langkah perlu diambil untuk memaksimumkan penggunaan cara *procurement* inovasi.

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LIST OF ABBREVIATIONS

ICE	Institution of Civil Engineers
BEC	Building Employers Confederation
DRB	Dispute Review Board
DRP	Dispute Resolution Person
TQM	Total Quality Management
ADR	Alternative Dispute Resolution
CEDR	Centre for Dispute Resolution
IDR	International Dispute Resolution Europe Ltd
RIBA	Plan of Work
NEDO	National Economic Development Office
PAM	Pertubuhan Akitek Malaysia
REHDA	Real Estate & Housing Developer's Association Malaysia
ICEM	The association of Consulting Engineer Malaysia
MBAM	Master Builder Association Malaysia
LJBM	The Board of Quantity Surveyors Malaysia

CHAPTER 1

INTRODUCTION

1.1 INTRODUCTION

The construction industry is notorious for high levels of conflicts and disputes. It is a project-based industry with each project being unique. Within a project life cycle, a large number of separate firm are involved. Failures by one party can affect all those engaged in a project and, as work often takes substantial periods during which national economic circumstances can alter, it is inevitable that dispute will arise.

From the above-mentioned scenario, it should not be surprised that the techniques of conflict management and dispute resolution in construction industry are more developed, compared to other industry. According to Fenn *et al* (1997), conflict can be managed, possibly to point of preventing it from leading to dispute whereas, disputes require resolution and, therefore, are associated with distinct justifiable issue.

1.2 PROBLEM STATEMENT

In resolving the conflicts in construction industry, Fenn (1991) commented that although various methods of conflict management and dispute resolution such as Litigation, Arbitration and Alternative Dispute Resolutions have been and continue to be explored and developed, the industry does not yet seems to be satisfied with the findings in views of tremendous increases of initiation of litigation cases.

This has raised a question about the efficacy of the development of conflict management and dispute resolution, which is tending to solve the problems rather than preventing them. As mentioned by Baden-Hellard (1992), any attempt to resolve conflict expeditiously, economically and effectively should start as early as possible in the chain of events causing the situation. Therefore, as suggested by Newey (1992), we better concentrate on the possibilities of prevention rather than cure.

Procurement method for construction industry is defined as "the organizational structure adopted by the client for the management of the design and construction of a building project" (Masterman, 1992), it is functioning as the core of construction project. The construction project should be reciprocal interdependency, where inputs from various project participants are needed along each stage of construction process. However, traditional procurement method that had been widely implemented in Malaysia is categorized as sequential interdependency, which characteristic is the separation of the responsibilities for the design and construction of the project (Masterman, 1992).

Procurement methods, which set out the relationship and the communication channel of the participants within the construction project, it should be treated as potentially the most convincing preventive measure.

1.3 NEED OF THE STUDY

As mentioned earlier, prevention is better than cure in resolving conflicts. Therefore, the procurement process, which falls at the early stage of the project life cycle, should be one of the best preventive methods in managing conflicts for construction industry.

This study will firstly identify the causes of the conflicts and disputes for Malaysia construction industry, and also the dispute resolution methods to be used. The implementation of innovative procurement methods, as conflict management technique in the taxonomy of conflict management and dispute resolution and preventive measure

(Smith, 1996), should be reviewed and investigated.

This study will examine the possibilities for the occurrence of dispute in traditional procurement method as compared to innovative procurement methods such as design and built, construction management and partnering.

The study also will examine the extent of innovative procurement methods as conflict management for Malaysia construction industry as compared with traditional procurement method. Only with the positive conclusion from the study, showing that innovative procurement methods are able to reduce the occurrence of disputes, the application of innovative procurement methods shall be encourage for all the construction projects in Malaysia.

1.4 AIM AND OBJECTIVES

This study aims to examine the extent of innovative procurement methods as conflict management and resolution mechanisms for construction industry as compared with traditional procurement method. The objectives are:

- a) To study the nature of conflict and its management.
- b) To study the conflict management and dispute resolution methods in construction industry.
- c) To examine the importance of innovative procurement method as a conflict reduction mechanism between the parties involved in construction industry.
- d) To provide critical overviews of the traditional approach to a procuring construction project with regard to potential conflicts which may occurs.
- e) To examine the extent of innovative procurement methods, as compared to Traditional procurement method in minimizing conflicts in construction projects.

1.5 SCOPE OF THE STUDY

Scopes of the study are:

- a) Examination on the extent of innovative procurement methods, as compared to Traditional procurement method in minimizing conflicts are mainly for construction industry only.
- b) Innovative procurement methods are refer to design and build, construction management and partnering only.
- c) The coverage area for collecting data is limited to Peninsular Malaysia only.

1.6 SIGNIFICANCE OF THE STUDY

1.6.1 Theory and Literature Reviews

A theory and literature survey was carried out using texts, journals, conference proceedings, dissertations and computer network information systems in order to explain and examine extent of procurement methods in conflict reduction.

The theory and literature reviews of general conflicts and its management were first being examined and reviewed. Critical theory and literature reviews of traditional procurement method have sought in order to identify the sources of conflicts and disputes. Some techniques of conflict management and resolution, which are adopted by the current Malaysia construction industry, will be reviewed and examined. Further critical reviews of procurement methods, as the conflict management and conflict reduction mechanisms will be carried out.

The better-known innovative procurement methods, Construction Management and Design-and-Build, coupled with a recent emerging innovative procurement methods - Partnering have been chosen as the models which might have the tendency of reducing the conflicts encountered by traditional procurement method. The impact and the extent of innovative procurement methods to conflicts reduction will be examined.

1.6.2 Field Study

The postal questionnaire is considered to be the appropriate approach for this survey, which provides a wide geographic coverage and a broad study. A postal questionnaire will be carried out to collect the information and views regarding conflicts and disputes, which have or might occur in the chosen procurement methods. The data will be collected primarily from all parties involved, including clients, construction managers, architects, consultants, quantity surveyor, main-contractors and sub-contractors. Suitable methods of data analysis were used to analyze the collected data.

CHAPTER 2

CONFLICT AND ITS MANAGEMENT

2.1 INTRODUCTION

As humans, we live within a web of social relationships, conflict becomes a part of everyone's life (Donohue, 1992). Within our various social relationships, some involve real or perceived differences between two or more parties, where interests of the parties are mutually exclusive - that is, where the gain of one party's goal is at the cost of the other's or where the parties have different values. Hence, resulting social interaction between the parties contains fertile ground of conflict (Filley, 1975).

Therefore, conflict affects virtually all kinds of organizations - businesses, government agencies, schools, hospitals, law firms, unions, armies, volunteer organizations and occurs at all level of society - interpersonal, intra-group, inter- group, intra-national and inter-national (Laue, 1990), but conflict dynamics are more visible in some than in others (Brown, 1983).

In this chapter, discussion will firstly define the conflict and its functions, following with determining causes and type of conflict and its respond. Lastly the discussion will focus on conflict management and dispute resolution.

2.2 DEFINITION OF CONFLICT

Conflict has been defined in Collins Cobuild English Dictionary (1995) as "serious disagreement and argument about something important" and also as "serious

difference between two or more beliefs, ideas or interest". The phenomenon of conflict has drawn much attention from social scientists and researchers. The relevant literature is virtually endless and proposes many different definitions.

Some emphasize the conditions that breed disagreement, such as scarce resources or divergent interests. Others emphasize the perceptions and feelings arising in conflict, such as stereotypes, hostility and antagonism; still others focus on the behavior, such as covert resistance or overt aggression (De Bono, 1985).

However, attention in this dissertation will be directed toward the management of certain types of work-related conflicts, that is, according to Bisno (1988), conflict related to interests and commitment. The working definition of conflict is adopted from Donohue *et al* (1992), who described conflict as:

"Interdependent people express (manifest or latent) difference in satisfying their individual needs and interests and they experience interference from each other in accomplishing these goals."

Donohue *et al* (1992) mentions that four elements - interdependence, manifest-latent, needs and interests, and interference explained below are important reference points in understanding conflict situations.

Table 2.1 Elements in conflict situations.

Interdependence	Conflict require interdependence and its often promotes interdependence as parties continue to fight, this is because the moment that parties enter conflict, or have the potential for conflict, they assume the ability of to affect one another's thoughts and or behaviors
Manifest-Latent	Conflict also varies according to the extent to which it is out in the open (manifest) or hidden (latent) from view. Manifest conflict is a sign that people have differences and they need to express them, whereas latent conflict consists of differences that remain hidden, which is sort of habit of not exposing differences
Needs and Interest	Needs are basic human desires tied to self-concept or self-esteem, interests, on the other hand, are desire that life apart from an individual's self-concept.

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2.3 FUNCTIONS OF CONFLICT

Much of the social science literature can be divided into two perspectives on conflict. In one tradition, in which social integration and stability are emphasized, conflict is seen as disruptive, dangerous and indicative of underlying social pathologies. Conflict management strategies from this perspective focus particularly on conflict resolution (Brown, 1983). In another important social science tradition, in which social diversity and development are emphasized, conflict seen as energizing, creative and evidence of social dynamism. In this tradition, conflict management strategies emphasize differentiation and conflict stimulation. Therefore, there is much argument about whether conflict is constructive or destructive (Bisno, 1988) and functional or dysfunctional (Whitfield, 1994). However, Brown (1983) argues that conflict may be either good or bad, depending on the circumstances and the value of the observer.

2.3.1 Constructive vs Destructive

Elton Mayo has treated conflict as "an evil, a symptom of lack of social skills" and its alleged opposite, co-operation, as "symptomatic of health". However, several researches have noted the positive consequences of conflict (Brown, 1983). Organizations in which there is little or no conflict may stagnate (Rahim, 1985).

What determines whether a conflict will take a constructive or destructive course? According to Deutsch (1987) the answer involves two steps. The first is that a constructive process of conflict resolution can be identified with a co-operative social

process: it has the same social-psychological characteristics as a co-operative process. A destructive process of conflict resolution, on the other hand, typically has the social psychological characteristics of a competitive process. The second part of its answer is that successful co-operation tends to breed the conditions for further co-operation, while competition tends to breed the conditions for further competition. The argument of Deutsch (1987) is that effects of a co-operative process will induce co-operation and will induce constructive processes of conflict resolution and vice versa.

The example given by Deutsch (1987) is effects of co-operation and compare with competition in terms of what happens in communication. As a result of good co-operation communication tends to be relatively full and relatively open. People have no desire to mislead, misrepresent or falsely communicate. On the other hand, the typical effect of a competitive process on communication is that it tends to interfere with communication. The typical result in competitive interaction is that communication becomes less frequent, people try to mislead them, try to get their information indirectly.

Described by Deutsch (1987), another difference between co-operative and competitive processes in term of effects is the way to influence people. In the co-operative process, members are interested in persuasion having the other person see the position that they are advocating and to see it in a way that is acceptable. In a competitive process, on the other hand, such persuasion is unlikely to occur, techniques of intimidation, coercion; threat and stronger power to force other into a position that is desired are practiced.

Another typical difference in the two kinds of processes introduced by Deutsch (1987) is that in a co-operative process, where party involved has a positive interest in the power of the other. By contrast, in a competitive process, interest in increasing the differences between powers is more likely to be encountered. Moreover, a typical result of co-operation is that, one tends to see the other person as being similar to oneself with regard to basic values and orientations. In contrast, competitive process is that, one sees the other as being different from opposed to oneself. Table 2.1 shows the difference between co-operative and competitive.

Table 2.2: Co-operative vs competition

	CO-OPERATIVE PROCESSES	COMPETITIVE PROCESSES
Communication	Open information and honest communication of relevant between the participants	Lack of communication or misleading communication
Perception	Tends to increase sensitivity to similarities and common interests, while minimizing the salience of differences	Tends to increase sensitivity to differences and threats, while minimizing the awareness of similarities.
Attitudes toward one another	Leads to a trusting, friendly attitude and it increase the willingness to respond helpfully to other's needs and requests.	Leads to a suspicious, hostile attitude and it increases the readiness to exploit the other's needs and to respond negatively to the other's requests.
Task orientation	Leads to a definition of the conflicting interests as a mutual problem to be solved by collaborative effort.	Stimulates the view that the solution of the conflict can only be the type that is imposed by one side on the other

In brief, to create the conditions for a destructive process, one would introduce the typical characteristics and effects of a competitive process: poor communication; coercive tactics; suspicion; perception of basic differences in values; orientation to increasing the power differences, challenges to the legitimacy of the parties and so forth. On the other hand, to create the conditions for a constructive process, one would introduce into the typical effects of a co-operative process; good communication; the perception of similar beliefs and values; full acceptance of one another's legitimacy; problem-centered negotiations; mutual trust and confidence, information-sharing and so forth. Deutsch (1971) states that a competitive process of conflict resolution is likely to be destructive.

Wright (1990) and Mack *et al* (1971) describe competition as opposition among social entities independently striving for something of which the supply is inadequate to satisfy all. Further, Wright (1990) classified rivalry as half way between conflict and competition, which refers to opposition among social entities which recognize one another as competitors. Conflict, rivalry and competition are all species of opposition,

which has been defined by Wright (1990), as a process by which social entities function in the disservice of one another. Opposition is thus contrasted with co-operation, the process by which social entities function in the service of one another. Table 2.2 shows the comparison between conflict and competition.

Table 2.3: Conflict vs competition

CONFLICT	COMPETITION
Definition: Opposition among social entities directed against one another (Wright, 1990).	Definition: Opposition among social entities independently striving for something of which the supply is inadequate to satisfy all (Wright, 1990).
Requires the perception of opposition to a person, social unit or belief system (Wright, 1990 & Bisno, 1988)	Does not require the perception of opposition to a person, social unit or belief system (Wright, 1990 & Bisno, 1988).
May be engaged over virtually anything, from basic interests to trivial preferences or matters of largely emotional meaning (Bisno, 1988).	A process directed toward significant goals, such as the attainment of interests or the dominance of beliefs to which one has a commitment, thus excluding many types of concern about which there may be conflict

Wright (1990) does mention that though conflict in some form, not necessarily violent, is very likely to occur, and is probably an essential and desirable element of human societies. Moreover, the consensus among the organization theorists (Rahim, 1985) about certain or optimum level of conflict in an organization is not only inevitable but also desirable and it is both a cause and an effect of change (Deutsch, 1971). Therefore, it appears that the relation between conflict and organizational effectiveness seems approximates an inverted-U function (Figure 2.1).

As such, Brown (1983) suggests that conflict management can require intervention to reduce conflict if there is too much, or intervention to promote conflict if there is too little (Rahim, 1985).

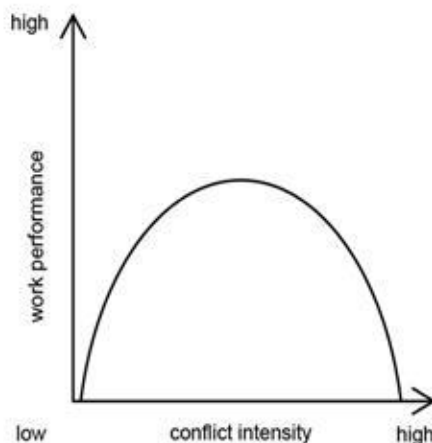


Figure 2.1: Conflict intensity and conflict outcomes

Source: Brown, 1983

Conflict in this dissertation is not dealing with "pure" conflict, which described by Deutsch (1971) as the zero sum game, which inevitably one side loses what the other gains. Interest is in "impure" conflict, which according to Deutsch (1971) is a mixture of co-operative and competition interests. In the other words, in situations where a variety of outcomes are possible: mutual gain, mutual loss, gain for one and loss for the other.

2.4 CAUSES AND TYPES OF CONFLICT

Pointed out by Pondy (1967), conflict can be more readily understood if it is considered as a dynamic process. A conflict relationship between two or more individuals or groups in an organization can be analyzed as a sequence of conflict episodes. Each conflict episode begins with conditions characterized by certain conflict potentials. Five stages of a conflict episode identified by Pondy (1967) are:

a) Latent Conflict (Conditions)

Latent conflict refers to the source of a conflict, though they may be present in the absence of conflict as well. Four different basic types of latent conflict introduced by Pondy (1967) are competition for scarce

resources; drives for autonomy; divergence of submit goals and role conflict.

b) Perceived Conflict (Cognition)

According to Pondy (1967), this stage of conflict is said to result from parties misunderstanding of each other's true position, there is a realization of conflict, but neither party is upset about it (Gardiner *et al*, 1992). Perceived conflict may be accompanied by latent conflict or be presented when there is no latent conflict. Stated by Gardiner *et al* (1992), this is quite likely to happen in construction projects, as the organization of project is temporary in nature.

c) Felt Conflict (Affect)

Felt conflict is a personalized conflict relationship (Filley, 1975), therefore, the important distinction between perceiving conflict and feeling conflict is for felt conflict, the affective state of the individuals involved at which point they begin to suffer stress, tension, hostility, anxiety, etc. as a result of a conflictful situation

d) Manifest Conflict (Behavior)

Manifest conflict means that any of the several varieties of conflictful behavior. It involves openly aggressive behaviors ranging from mild passive resistance through sabotage to actual physical conflict and verbal violence, which is usually strongly proscribed by organizational norms. It is behavior, which in the mind of the actor, frustrates the goals of at least some of the other participants.

e) Conflict Aftermath (Conditions)

Conflict Aftermath is the responses or the outcomes of conflict, which may involve changes. There may be no "active" responses but there will be an outcome, even if its sustained chronic conflict (continuous, high-level conflict).

According to Pondy (1967), the development of each conflict episode is determined by a complex combination of the effects of preceding episodes and environmental milieu, as the organization is not a close system. The main ideas of this view of dynamic of conflict are illustrated in Figure 2.2.